

MILPERSMAN 1910-106

SEPARATION IN LIEU OF TRIAL BY COURT-MARTIAL

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References	(a) Manual for Courts-Martial United States (2002 Edition) (b) BUPERSINST 1900.8A
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1. **Policy.** Members may request separation in lieu of a trial by court-martial if

a. the preferred charges could result in a punitive discharge per reference (a), Appendix 12, Maximum Punishment Chart; and

b. the commanding officer (CO) determines that the member is unqualified for further service.

2. **Request For Separation**

a. Members requesting a discharge should submit a signed request in proper letter format. When counsel is consulted, the counsel's signature is required as well. The following is the proper format:

From: (rate, name, branch of service, social security number)
To: (General Court-Martial Convening Authority (GCMCA)/
Special Court Martial Convening Authority (SPCMCA)
as appropriate) having jurisdiction over the member)
Via: (commanding officer)

Subj: REQUEST FOR SEPARATION IN LIEU OF TRIAL BY COURT-MARTIAL

Ref: (a) MILPERSMAN 1910-106

Encl: (1) Copy of court-martial charges
(2) Copy of a summary of the evidence or list of
documents provided to member
(3) Member's statement (if applicable)
(4) Appointed counsel statement (if applicable)

1. Per reference (a), I fully understand the elements of the offense(s) charged in enclosure (1) and I hereby voluntarily submit this request, free from any duress or promises of any kind, for separation in lieu of trial by court-martial.

2. I have been afforded an opportunity to consult with counsel and I: (Initial as appropriate.)

() did consult with counsel.

() waive my right to consult with counsel.

3. I admit that I am guilty of: (List the offenses of which the member acknowledges guilt. These may be lesser included offenses, which have been referred to a special court-martial (SPCM) or general court-martial (GCM)). A summary of the evidence provided me pertaining to the offenses to which I acknowledge guilt is included in enclosure (2).

4. I understand that if my discharge is Under Other Than Honorable Conditions, it may deprive me of virtually all veterans' benefits based upon my current period of active service, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces, or the character of discharge received therefrom, may have a bearing.

5. I understand that I may submit a sworn or unsworn statement on my behalf. I also understand that statements submitted by

myself or by my counsel in connection with this request are not admissible against me in a court-martial, except as provided by Military Rule of Evidence 410. I (do/do not) desire to submit a (sworn/unsworn) statement. (If applicable add the following:) My (sworn/unsworn) statement is submitted as enclosure (3).

6. I have retained a copy of this request for separation in lieu of trial by court-martial, including all enclosures.

Signature of Member

Witnessed: (signature of counsel(s))
(name, grade, corps, branch of service
name and address of civilian counsel (if applicable)
state licensed/date)

b. If the member elects to have civilian counsel at member's own expense, the record shall indicate the name, address, and qualification of the civilian counsel.

RULE: If the member waives the right to consult with counsel, the command shall prepare a statement to this effect, which shall be enclosed, and disregard completing the witness block area.

c. SPCMCAs may approve or disapprove requests for members who have been absent without leave for more than 30 days, dropped from the rolls of their parent unit as a deserter, returned to military control, and assigned to a separation processing activity; however, the member can only be charged with the unauthorized absense (UA) of more than 30 days. If other charges are preferred, and not dismissed by the convening authority (CA), separation per this article must be referred to a GCMCA.

d. Since separation in lieu of court-martial is based on the voluntary request of the member and is considered comparable to a plea bargain, it may be approved even after the member's expiration of active obligated service (EAOS)/expiration of service (EOS).

3. Characterization of Service

a. Separation authority (SA) determines characterization of service, which is normally OTH; however, General (Under Honorable Conditions) or Entry Level Separation (ELS) may be assigned, as appropriate.

(1) Honorable characterization is not authorized under this reason for processing.

(2) See MILPERSMAN 1910-300 for characterization guidance.

(3) If the member has less than 180 days of service, an ELS may be appropriate. See MILPERSMAN 1910-308.

b. A Separation Program Designator (SPD) of KFS must be assigned per reference (b).